

§ 222.54 Grazing fees in the East—competitive bidding.

(a) *General Procedures*—(1) *Applicability*. The rules of this section apply to grazing fees for any allotment established or vacated on National Forest System lands in the Eastern or Southern Regions, as of February 26, 1990 as well as to grazing fees for existing allotments for such lands that have already been established under competitive procedures as of the date of this rule. Permits offered for competitive bidding in the East are subject to the rules governing grazing permit administration in subpart A of this part. The rules of this section do not apply to negotiated livestock use permits or permits with on-and-off grazing provisions as authorized in subpart A of this part. Holders of term permits have first priority for receipt of a new term grazing permit in accordance with subpart A of this part. These rules also do not apply to grazing fees on National Forest System lands in Oklahoma or National Grasslands in Texas.

(2) *Allowable Bidders*. Bids for grazing permits shall be accepted from individuals, partnerships, grazing associations (formed after February 26, 1990), joint ventures, corporations, and organizations.

(b) *Establishment of Minimum Bid Price*. Authorized officers shall establish a minimum bid price for each available allotment as described in § 222.53 of this subpart.

(c) *Prospectus*. (1) At such time as allotments are vacated, as new allotments are established, or as existing competitively bid permits expire, the authorized officer shall prepare and advertise a prospectus for those allotments on which grazing will be permitted.

(2) The prospectus shall include the terms and conditions of occupancy and use under the grazing permit to be issued, as well as document existing improvements and their condition. The prospectus shall also disclose the following:

- (i) Estimated market value of the forage per head month of grazing use;
- (ii) The minimum bid price the agency will accept;
- (iii) Any required range improvements; and

(iv) The minimum qualifications that applicants must meet to be eligible for a permit.

(3) Copies of the applicable grazing permit, allotment management planning documents and allotment maintenance requirements, and the latest annual permittee instructions shall be made available to all prospective bidders upon request.

(d) *Submission of bid*. Each applicant shall submit an application for the grazing permit, along with a sealed bid for the grazing fee, and a bid deposit of 10 percent of the total amount of the bid.

(e) *Qualifications and Deposit Refunds*. Upon opening applicants bids, the authorized officer shall determine whether each bidder meets the qualifications to hold a permit as set forth in Subpart A of this part; and shall refund the deposit to any applicant who is not qualified or who does not offer the high bid.

(f) *Permit Issuance*. The authorized officer shall issue the grazing permit to the qualified high bidder, except as provided in paragraphs (f)(1) and (2) of this section. The successful bidder receives the privilege of obtaining or renewing a grazing permit and is billed for the occupancy offered and forage sold.

(1) *Priority for Reissuance*. On allotments where a current permit is expiring and competition has been held on a new grazing permit, the current grazing permittee shall have priority for retaining the permit. Accordingly, an applicant who holds the permit on the allotment under bid, who has a satisfactory record of performance under that permit, and who is not the higher bidder for the future grazing privileges in the specified allotment shall be offered the opportunity to match the high bid and thereby retain the permit. Should there be more than one existing permittee in the allotment under bid, each shall be offered the option of meeting the high bid; if only one current permittee opts to meet the high bid, the remaining allowable grazing use, if any, shall be awarded to the initial high bidder.

(2) *Identical Bids*. In cases of identical bids, the selection of the successful applicant shall be made through a drawing.

(g) *Computation of Successful Bidder's Annual Fee*—(1) *Annual Fee Basis*. The highest bid received shall establish the base grazing value in the initial year of the grazing permit for each allotment offered. The annual grazing fee shall equal the base grazing value, adjusted by the current period's hay price index for the relevant subregion as described in §222.53(c)(1), and (c)(3), less the value of any agency required range improvements. This hay price index shall be based on 3-year average hay prices and annually reflect the percent change in the cost of alternative livestock feed.

(2) *Grazing Fee Credits for Range Improvements*. Any requirements for permittee construction or development of range improvements shall be identified through an agreement and incorporated into the grazing permit, with credits for such improvements to be allowed toward the annual grazing fee. Fee credits shall be allowed only for range improvements which the Forest Service requires an individual permittee to construct or develop on a specific allotment to meet the management direction and prescriptions in the relevant forest land and resource management plan and allotment management plan. These improvements must involve costs which the permittee would not ordinarily incur under the grazing permit, must be of tangible public benefit, and must enhance management of vegetation for resource protection, soil productivity, riparian, watershed, and wetland values, wildlife and fishery habitat, or outdoor recreation values. Maintenance of range improvements specified in allotment management planning documents or the grazing permit, and other costs incurred by the permittee in the ordinary course of permitted livestock grazing, do not qualify for grazing fee credits.

(h) *No Bids Received*. If qualified sealed bids are not received, the authorized officer reserves the right to conduct an oral auction using the minimum bid price established under paragraph (b) of this section or to establish grazing fees through noncompetitive grazing fee procedures specified in §222.53 of this subpart.

[55 FR 2651, Jan. 26, 1990]

PART 223—SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER

EFFECTIVE DATE NOTE: At 73 FR 79386, Dec. 29, 2008, the heading of part 223 was revised, effective Jan. 28, 2009. At 74 FR 5107, Jan. 29, 2009, the amendment was delayed until Mar. 30, 2009. At 74 FR 14049, Mar. 30, 2009, the amendment was further delayed until May 29, 2009. At 74 FR 26091, June 1, 2009, the amendment was delayed indefinitely. For the convenience of the user, the revised text is set forth as follows:

PART 223—SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER, SPECIAL FOREST PRODUCTS, AND FOREST BOTANICAL PRODUCTS

Subpart A—General Provisions

Sec.

- 223.1 Authority to sell timber.
- 223.2 Disposal of timber for administrative use.
- 223.3 Sale of seized material.
- 223.4 Exchange of trees or portions of trees.
- 223.5 Scope of free use granted to individuals.
- 223.6 Cutting and removal of timber in free-use areas.
- 223.7 Permission for free use of timber outside free-use areas.
- 223.8 Delegations of authority to approve free use by individuals.
- 223.9 Free use to owners of certain mining claims.
- 223.10 Free use to Alaskan settlers, miners, residents, and prospectors.
- 223.11 Free use to other Federal agencies.
- 223.12 Permission to cut, damage, or destroy trees without advertisement.
- 223.13 Compliance.
- 223.14 Where timber may be cut.

Subpart B—Timber Sale Contracts

CONTRACT CONDITIONS AND PROVISIONS

- 223.30 Consistency with plans, environmental standards, and other management requirements.
- 223.31 Duration of contracts.
- 223.32 Timber sale operating plan.
- 223.33 Redetermination of stumpage rates and deposits.
- 223.34 Advance payment.
- 223.35 Performance bond.
- 223.36 Volume determination.
- 223.37 Revegetation of temporary roads.
- 223.38 Standards for road design and construction.
- 223.39 [Reserved]
- 223.40 Cancellation for environmental protection or inconsistency with plans.